

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 20 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0317-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RAMON JOSE GARCIA, JR.)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200602107

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Ramon Jose Garcia, Jr.

Florence
In Propria Persona

ECKERSTROM, Judge.

¶1 Pursuant to a plea agreement, petitioner Ramon Garcia was convicted of sexual conduct with a minor and attempted sexual conduct with a minor. The trial court sentenced Garcia to the minimum, ten-year prison term for the completed offense and, for the attempt conviction, placed him on lifetime probation “upon absolute discharge from prison.” The court specified that the prison term in this cause was to be served

consecutively to a sentence the Pima County Superior Court previously had imposed in another case, CR20072935.

¶2 In his petition for review, Garcia contends the trial court erred when it denied his request for post-conviction relief, pursuant to Rule 32, Ariz. R. Crim. P., based on the fact that the Pima County court had ordered that any term ultimately imposed in this, the Pinal County case, was to be served concurrently with the term the court was imposing in the Pima County case, consistent with the terms of the plea agreement in the Pima County case. We will not disturb the trial court's ruling unless the court clearly abused the discretion it has to determine whether post-conviction relief is warranted. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Garcia has not established the court abused its discretion.

¶3 In its minute entry, the court identified the claims Garcia had raised and addressed them thoroughly, concluding that Garcia had failed to raise a colorable claim. No purpose would be served by reiterating the court's ruling in its entirety here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Rather, because the record before us and the applicable law support the court's ruling, we adopt it. We note, in particular, that the plea agreement in this case expressly provided that any prison term imposed was to be "consecutive to the sentence in Pima County CR 2007-02935." Additionally, the record establishes that, as the trial court pointed out in its minute entry, it had explained this portion of the plea agreement to Garcia at the change-of-plea hearing/settlement conference. The court specifically addressed with Garcia the "dilemma" that had arisen because the judge in the Pima County case had guaranteed the sentence that was to be imposed in the Pinal County case would be concurrent with the Pima County case. The court explained the judge in Pima County did not have the

authority to give Garcia that guarantee and, because there were two victims, the terms would be consecutive. The court explained to Garcia that if he wished to seek relief related to the “dilemma,” it would have to be in Pima County. Garcia assured the court he understood the sentence would be consecutive to the Pima County case, notwithstanding what he had been promised in the Pima County case.

¶4 In denying post-conviction relief the trial court correctly concluded that the Pima County court could not bind the Pinal County court with respect to a sentence that had yet to be imposed. *Cf. State v. Goodloe*, 107 Ariz. 141, 141-42, 483 P.2d 556, 556-57 (1971) (court that placed defendant on probation lacked jurisdiction to vacate guilty plea by defendant in another case and court; conviction in other court did not bind trial court to revoke probation); *State v. Kennedy*, 106 Ariz. 190, 194, 472 P.2d 59, 63 (1970) (acknowledging “court imposing a second or later sentence . . . ha[s] authority to make the sentence run concurrently with a former sentence imposed by another court”); *State v. Prevost*, 118 Ariz. 100, 105, 574 P.2d 1319, 1324 (App. 1977) (federal court lacked authority to require state court to order sentence for state conviction to be served concurrently with federal sentence defendant was already serving). As the court pointed out in its minute entry, it had informed Garcia at the change-of-plea/settlement hearing that any challenge Garcia could make in this regard would have to be addressed to the Pima County court.

¶5 The gravamen of Garcia’s request for post-conviction relief is that the trial court could not impose a consecutive prison term because of the plea agreement and sentences in the Pima County case. But he also has suggested below, and asserts in his petition for review, that his constitutional rights were violated, including his double jeopardy rights. He asserts, albeit in a cursory, conclusory manner, that the consecutive

prison terms violated these rights and that the indictment was duplicitous. The court implicitly denied relief on this ground and did not err in doing so. By entering the plea in this case he waived any nonjurisdictional defects, including the challenge to the indictment. *See State v. Lerner*, 113 Ariz. 284, 285, 551 P.2d 553, 554 (1976) (guilty plea waives claims that evidence unlawfully obtained, defendant illegally detained, or prosecution violated double jeopardy rights); *State v. Flores*, 218 Ariz. 407, ¶ 6, 188 P.3d 706, 708-09 (App. 2008) (guilty plea waives all nonjurisdictional defects, including violation of constitutional rights). And the suggestion that the consecutive terms amounted to double punishment is unsupportable. The offenses were clearly separate acts. *See* A.R.S. § 13-116.

¶6 The petition for review is granted but for the reasons stated, relief is denied.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge